IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 67 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

DAULATSINGH KESHRISINGH

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR AJ DESAI APP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 08/09/2000

C.A.V. JUDGEMENT

1. This Revision Application under Section 401 read with Section 397 of the Code of Criminal Procedure prays for setting aside the order of conviction and sentence made in Criminal Case No.660 of 1990 and confirmed in

appeal in Criminal Appeal No.19 of 1992 by the learned Additional Sessions Judge, Surendranagar. The petitioner was charged for the offences under Sections 85 (1) (1) and (3) and 66 (1) (b) of the Bombay Prohibition Act, 1949 and being convicted was sentenced to rigorous imprisonment for six months and fine of Rs.1000.

2. The petitioner-accused was an unarmed police head constable with the Railway Police Force and, on 13.2.1990, was found to be in a drunken state in the cycle-stand near railway station at around 3.00 p.m. The accused was taken to the Government Hospital for medical examination where samples of his blood were taken and the samples were sent to the laboratory which, after due analysis, reported that the alcohol level was higher than the minimum prescribed under the said Act. Although the panch witnesses who were present at the time the accused was taken to the police station had turned hostile, the accused was convicted on the basis of the blood analysis report and, he being a police head constable, a serious view was taken to punish him with the sentence as above.

3. The petitioner has, at the trial stage as well as at the appellate stage, seriously disputed the legality of the procedure followed by the doctor at the time of taking the samples of his blood and particularly contended that Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 was not strictly followed in the facts of the case. After due appreciation of evidence, the trial Court has recorded the finding of fact that reading the deposition of the doctor, the provisions of the said Rule 4 were strictly complied with. Dealing with the same contention, the learned Additional Sessions Judge has confirmed the finding while rejecting the appeal.

4. The learned counsel for the applicant has reiterated the same contention and submitted that the phial containing the blood samples of the applicant was sent alongwith other phials and there was every possibility of the other samples being mixed, and further submitted that the prosecution had failed to prove beyond reasonable doubt that the concentration of alcohol in the blood was more than 0.05%. The record and proceedings of both the lower Courts were called for and examined during the present proceeding. The learned counsel for the petitioner failed to show any lacuna in the evidence of the prosecution and particularly the deposition of the doctor. A new plea was sought to be taken on behalf of the applicant by submitting that the anti-coagulant and preservative required to be added to the blood sample

were not added by the doctor himself and hence there was a strong possibility that the phial was containing alcohol when the blood collected in the syringe was transferred into the phial. In this context, the deposition of the doctor is referred to wherein he has stated that after taking the blood in a sterilized syringe, the phial which contained anti-coagulant and preservative was shaken by him. It is pointed out that it is nowhere in evidence that the doctor himself had taken the anti-coagulant and preservative in the phial. In this regard, the following observations made in the judgment of this Court in KALIDAS DHULABHAI VAGHELA v. STATE OF GUJARAT [1996 (2) GLR 372] are relied upon:

> "It is clear on plain reading of the aforesaid Rule 4 that the blood is to be collected in the syringe and to be transferred into phial containing anti-coagulant and preservative and it has to be done by the doctor. It is not clear from the material on record as to at what point of time the anti-coagulant and preservative were added in the prepared phial which was given to P.W.3 for the purpose of collection of blood of the accused. This is a grave infirmity in the process of collecting the blood of the accused. It is, therefore, in clear breach of the above Rule 4. It is also clear from the evidence on record that the anti-coagulant and preservative which had to be added were not added by the doctor himself. As observed above, the doctor admitted that he had received a ready phial containing anti-coagulant and preservative. There is no evidence or other material on record to show as to who in fact put anti-coagulant and preservative in the phial and at what time it was so placed in the phial".

5. Although the aforesaid plea and defence is neither clearly spelt out in the appeal or in the present application nor is it dealt with by the lower Courts, it has to be considered in light of the judgment cited on behalf of the applicant. It is true that otherwise both the lower Courts have concluded the issue with the finding that the doctor had taken sufficient care to scrupulously observe the provisions of Rule 4. However, the new plea supported by the judgment as above, has to be upheld and the applicant has to be given the benefit of doubt.

6. The learned Additional Public Prosecutor has submitted that the concurrent finding of fact and the

sentence confirmed in appeal ought not to be interfered in the revisional jurisdiction under Section 397 of the Cr.P.C. However, on perusal of the evidence on record and particularly the deposition of the doctor, it clearly appears that the aforesaid aspect is not at all adverted to and the applicant is entitled to the benefit of doubt.

7. In the above context, it is pertinent to refer to the judgment of the Hon'ble Supreme Court in the case of KALI RAM v. STATE OF HIMACHAL PRADESH [AIR 1973 SC 2773] wherein it has been held that the golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. It is, no doubt, true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, more worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person.

8. In the result, the Criminal Revision Application is allowed. The impugned judgment and order of conviction and sentence is quashed. The petitioner-accused is acquitted of the offence punishable under Section 66 (1) (b) of the Bombay Prohibition Act, 1949 upon giving the benefit of doubt. The fine, if paid by the petitioner-accused, is ordered to be refunded forthwith. The bail bond stands cancelled. Rule is accordingly made absolute.

Sd/-

(KMG Thilake)

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